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**RESPONSE UNDER 37 CFR 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 3641**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

For: METHOD TO CONTROL REACTIONS  
INVOLVING ISOTOPIC FUEL  
WITHIN A MATERIAL USING  
ORTHOGONAL ELECTRIC-FIELDS

Serial no. 09/ 748,691

Filed: 12/26/2000

This is a division of Serial no. 07/ 760,970

Filed: 09/17/1991

Group Art Unit: 3641  
Examiner: Palabrica, R.J.

April 15, 2006

The Commissioner for Patents  
Alexandria, VA 22313-14501

**PETITION TO THE COMMISSIONER  
PURSUANT TO 37 C.F.R. 1.181**

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Director of Patents. This Petition is made to invoke his supervisory authority to correct a wrongful situation involving a Decision [Exhibit "A", attached, hereinafter "Decision"] dated March 24, 2006, which has unfairly and erroneously denied Appellant's Petition.

2. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable based upon the reasons stated below and the facts as discussed in the Declaration supporting this Petition, and upon the law of the United States of America which requires truth in federal documents.

3. In the discussion below, reference is made to Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated April 15, 2006.

4. As will be shown absolutely and positively, said Decision is inaccurate, is unfair, has erroneous statements and was made to coverup serious false statements made in federal documents. Thus, there is impropriety as said Decision improperly, inaccurately and egregiously denies Appellant's Petition by unreasonably ignorings three (3) duly-submitted Appeal Briefs, and Appellant's un rebutted timely-submitted Declarations.

5. It will be demonstrated that the Decision is inconsistent with the normal uniform standard of review and with the truth expected in a federal document. Therefore, the Decision is wrong and should be immediately reconsidered and changed to correspond to the docket, to the already submitted compliant Briefs and to Appellant's arguments.

6. The Decision states:

*"On April 30, 2003 and May 5, 2003, applicant filed a Notice of Appeal appealing the final rejection made on February 3, 2003. On July 3, 2003, applicant filed an Appeal Brief."*

**THE TRUTH - The Appellant filed a Notice of Appeal, Appeal Briefs in triplicate and paid all fees**

The Appellant (then Applicant) filed a Notice of Appeal appealing the final rejection and paid all fees on April 30, 2003. Not mentioned in the Decision is that the Appellant also filed a Petition to the Commissioner which was received on May 5 2003. The Appellant filed an Appeal Brief in Triplicate and paid all fees on June 29, 2003 which was received by the Office on July 3, 2003. It was fully compliant.

7. The Decision states:

*"On August 29, 2003, a Notice of Non-Compliant Appeal Brief was mailed to the applicant. On September 23, 2003, applicant filed a second Appeal Brief."*

**THE TRUTH - The Notice of Non-Compliant Appeal Brief was Disingenuous**

First, ignored in the Decision is the fact that said "Notice of Non-Compliant Appeal Brief" was disingenuous and contained several false statements, apparently made to harass the Appellant and subvert his Constitutionally-protected civil rights. Second, not mentioned in the Decision is that the Appellant also filed a "Notice of Compliance by the Appellant", sent September 17, 2003, which clearly demonstrated those several false statements in the Office's Notice. For example, in Appellant's September 17, 2003 "NOTICE OF COMPLIANCE BY APPELLANT", Appellant demonstrated a false statement as follows:

**"The Office's notification states, "b. The Summary of Invention mischaracterizes the claimed invention. Applicant states that the current application is a division of parent application, S/N 07/760,970. The Appeal Brief describes the invention as a method to control the production of desired products (such as "heat"). On the other hand, the parent application discloses the invention as a "novel cold fusion device" that is capable of producing "excess heat". The term, "heat" can mean "joule heat" which is different from "excess heat" produced by the so called cold nuclear fusion device."**

With all due respect, the Examiner is incorrect. The above-entitled action is a divisional of Serial No. 07/760,970. The following is from the UNITED STATES COURT OF APPEALS FOR THE Federal CIRCUIT, Case 00 - 1108 (Serial No. 07/760,970) IN RE MITCHELL R. SWARTZ, Appeal from the Board of Patent Appeals and Interferences (No. 94-2920), APPEAL BRIEF, at (8) statement of facts with references (Rule 28(e)).

**"3. Appellant (hereinafter Applicant or Inventor) taught in the original specification and claims how his apparatus works and claimed the invention (\*\*1).**

**Claim 25. In a process for producing a nuclear fusion product from an isotopic fuel using a material, a two-stage method for controlling said reaction which includes in combination:**

**supplying an isotopic fuel to said material, loading said isotopic fuel into said material to saturate said material, then creating a change in the active quantity of said fuel within said material by desaturation, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material[s]."**

The teachings, and claim 25, involve, and the invention at issue in this case generally speaking is, a two-stage process involving hydrogen loading into a specialized metal electrode followed by internal flux (flow) within the metal. This two-stage system is as important and fundamental as

the critical difference between burning gasoline and its controlled ignition within an internal combustion engine. After the initial loading, said flow (or flux) of hydrogen takes place (pages 15-16,19-22,28,33-34; S.N.07/760,970) until the previously-loaded palladium is spent of its deuterons or the material is otherwise damaged.

4. Barriers are used to strategically inhibit the flow (Appendix C; A55-A59). In the preferred embodiment, the cathode is surrounded in coaxial fashion by a deuteron diffusion barrier (labelled 50 in figure 7) and an expansion barrier (labelled 40). The cathode is axially-fed the deuterons. These are obvious features of great utility. As taught in the original specification, in the preferred embodiment, this two-stage process is housed in a structural support system (labelled 20).

5. The original specification and claims of the present invention also taught and claimed improvement of heat removal and integration of smaller units into larger assemblies [figure 12]. In the preferred embodiment, the apparatus described by the present application is a device shaped like a fuse and can be easily placed into, or removed from, an assembly. The damage or rundown of one unit "is thus easily exchangeable by replacement with a functioning one", which is re-inserted, as taught in the above-entitled application, into mechanical restraining, electrical, and thermal connectors (labelled 94, 96, and 97) and further restrained with clips (labelled 92).

6. The original specification and claims of the present invention also taught and claimed a separation system (figure 18), to extract an precise product - another feature of great utility. A magnetic field inhomogeneity, based upon the differential magnetic susceptibilities [cf. Swartz and Straus Declarations; A10-A21], creates forces which make this a

*"non-linear device in the sense that the containment field distribution is spatially non-uniform. ... the ... invention is therefore a chemical collection device."*

*[Straus Declaration 1994]*

These are obvious features of great utility."

It is important to note that claims 25 through 48 did not discuss cold fusion nor "excess heat." Furthermore, claims 35 through 45 do not discuss any sort of nuclear, or fusion, reaction. Therefore, such new and disingenuous arguments on the part of the Office or the Appeals Board would not be consistent with the record."

Thus the first Notice contained a false and improper statement which violated the Appellant's civil rights.

8. As yet another example of a false statement in the first Notice, in Appellant's September 17, 2003 "NOTICE OF COMPLIANCE BY APPELLANT", Appellant stated that

"The Office's notification states,

"f. Appendix A is incorrect because some claims are recited differently from those finally rejected, e.g., claims 1 and 10."

The Applicant has put the correct claims in Appendix "A". Appellant attempted to call the Examiner who refused to address this matter to explain what he was speaking of. The Examiner was reminded that this was for the Board. He refused to discuss it.

The claims are those claims before Final. Attached is copies of the Post Cards stamped by the Office proving receipt [Exhibit "B", also Appendix "C"].

Applicant also presented amendments after Final to comply with the Examiner's suggestions/comments. Attached is the Post Card stamped by the Office showing receipt [Exhibit "B"]. This Exhibit proves Amendments were submitted after Final, and were timely received by

the Office. The claims before Final are in Appendix "A". The amendments submitted after Final are in Appendix "B". "

Thus, supported by evidence, this was further proof that a second portion of the first Notice was utterly improper and disingenuous and clearly violated the Appellant's civil rights.

9. The Decision states:

*"On November 18, 2003, a second Notice of Non-Compliant Appeal Brief was mailed to the applicant with the indication that applicant's response/attempt to correct the noted deficiencies was no longer considered to be inadvertent and the period for reply continued to run from the August 29, 2003 Notice of non-Compliance. Thus, applicant's statutory time period for adequately responding to the Notice of non-Compliance would expire on March 1, 2004."*

**THE TRUTH - The "Second Notice Of Non-Compliant Appeal Brief" Was Also Disingenuous**

Attention of the Director and the federal court is directed to three (3) salient facts. First, the Second Notice of Non-Compliant Appeal Brief was also disingenuous, with systematic false statements, and was apparently made to again harass the Appellant and usurp his civil rights. Second, not mentioned in the Decision is that the Appellant also filed a "Appellant's Notice To The Board Of False Statements In an Office Communication dated 11/18/03", sent November 24, 2003, which again demonstrated several false statements in the Office's Second Notice. Third, attention is directed to the fact that the Second notice had more than a dozen (12) false statements. These were discussed and proven in considerable detail - and ignored in the Decision. For the Director, the Court and the record, these will be discussed again here, and will be cited in a federal complaint if they are ignored further.

**"The Office's First False Statement (in the Second Disingenuous Notice of Non-compliance)**

5. Mr. Carone purports that there is "subject matter not found in the specification" and that the Appellant purportedly did not respond to his (nonspecific) previous citation. The Office's Communication inaccurately states,

*"1. The Summary still includes subject matter not found in the specification (see item b of previous Office Action)."*

**THE TRUTH - ALL SUBJECT MATTER WAS DISCUSSED IN THE SPECIFICATION**

The Office is wrong for at least five reasons. First, Appellant respectfully disputes this because the subject matter was discussed in the specification.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. For example, in said Notice, the Appellant said on page 2,

"The Office's notification (of 8/28/03) states,

*"The Summary includes subject matter not found in the specification (see page 7, last three paragraphs)."*

The Applicant has corrected this, and removed the citation from this section."

[ "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 2]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on pages 4 through 7 in the Appeal Brief, as said Notice stated on page 2. Not only was the effort of the Appellant ignored, but the Notice itself was ignored -- despite the fact that it was discussed with specificity on page 2 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication, once again has a false statement.

Third, Appellant respectfully disputes this because each and every matter of the invention was already before the Board. The Appellant has a right to present his case and for it to be concise, clear and accurate before the Board.

Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Fifth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 2.

This proves that a portion of the Second Notice was disingenuous and violated the Appellant's civil rights.

**The Office's Second False Statement (in the Second Disingenuous Notice of Non-compliance)**

**6. The Office's Communication inaccurately states,**

*"2. The recitation of Issues is still improper (see item c of the previous OA)."*

**THE TRUTH - THE RECITATION OF ISSUES IS PROPER**

The Office is wrong for at least six reasons. First, Appellant respectfully disputes this because the recitation of Issues is indeed proper. Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on pages 3 and 4,

"The Office's notification states,

*"c. The recitation and scope of Issues is improper. MPEP 1206 states that each stated issue should correspond to a separate ground of rejection which the appellant washes the Board to review. The statement of issues should not include any argument concerning the merit of the issues. For example, a proper way of phrasing an issue is as follows: 'Whether claims 1, 5 8, 10 14 and 21 30 are unpatentable under U.S.C. 101 because the claimed invention is inoperative and therefore lacks unity.' Applicant improperly includes other issues not relevant to the grounds of rejection used by the examiner, e.g., U.S. Constitution."*

"The Applicant has corrected this as requested. The Applicant has removed the offending references to the " U.S. Constitution." and reserves his rights to take the Constitutional issues to the Federal +Court, First Circuit by this unconstitutional action of the Office and/or Board censoring the very document which enables the Office."

**The Applicant has corrected this, and removed the citation from this section."**

**["Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4]**

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on pages 8 through 9 in the Appeal Brief, as said Notice stated on pages 3 and 4. The effort of the Appellant was ignored. The Notice was ignored -- despite the

fact that it was discussed with specificity on pages 3 and 4 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement.

Third, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Fifth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4.

Sixth, in the legal system, it is Appellant who makes notice of the Appeal - and not the Office. The Office is demanding that IT fashion the Appellant's issues. For some unknown reason, the Office now demands to control the thought, the Appeal, the issues, and the Arguments as of this date. That is unlawful and consistent with harassment, and has much more than an appearance of impropriety.

This is further proof that a portion of the Second Notice was improper and disingenuous and violated the Appellant's civil rights.

#### **The Office's Third False Statement (in the Second Disingenuous Notice of Non-compliance)**

**7. The Office's Second Communication invents a new argument to harass the Appellant and inaccurately states,**

*"The section still contains issue not relevant to the examiner rejections. Note that the Examiner provided in the previous Office Action an example and cited the specific section in the MPEP (i.e., 1206) that discusses of how to properly phrase an Issue."*

#### **THE TRUTH - EVERY ISSUE IS RELEVANT TO THE EXAMINER REJECTIONS**

The Office is wrong for at least five reasons. First, Appellant respectfully disputes this because each and every issue is relevant to the examiner rejections.

Second, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Third, Appellant respectfully disputes this because each and every issue relevant to the Examiner's rejections was already before the Board previously. The Appellant has a right to be concise, clear and accurate before the Board.

Fourth, Appellant notes that this statement is a new argument, and since Appellant did not add any new issues, it cannot be true.

Fifth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4.

This is further proof that a portion of the Second Notice was false and improper and violated the Appellant's civil rights.

**The Office's Fourth False Statement (in the Second Disingenuous Notice of Non-compliance)**

**8. The Office's Communication inaccurately states,**

*" The claimed "operability" of the invention is not a 35 U.S.C, 112, first and second paragraph issues, but a 35 U.S.C. 101 issue. "*

**THE TRUTH - 35 U.S.C. 101 INVOLVES UTILITY AND NOT OPERABILITY**

The Office is wrong for at least four reasons. First, Appellant respectfully disputes this because this is nonsense. For ten years the Office has cited "operability" pursuant to 35 U.S.C, 112, first paragraph issues. All of a sudden, Mr. Carone changes the Office's previous arguments that were reasonably consistent over more than a decade in this matter. This is egregious without a clear substantive basis for the paroxysmal change.

Second, Appellant respectfully disputes this because a 35 U.S.C. 101 issue involves utility and not "operability". Appellant discussed this in detail. Attention of the Court, Board, and Commissioner is now directed to where it was discussed in detail on pages 111 through 119 in the Appeal Brief. The effort of the Appellant was ignored. Where is the Office's response? Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement.

Third, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fourth, Appellant respectfully disputes this purported change by the Office because this is a new argument of the Office, and should be in the Argument section of the Office's response.

This is further proof that a portion of the Second Notice was improper and disingenuous and violated the Appellant's civil rights.

**The Office's Fifth False Statement (in the Second Disingenuous Notice of Non-compliance)**

**9. The Office's Communication inaccurately states,**

*" Notwithstanding this, the statements regarding the 35 U.S.C. 102 and 103 rejections are still improper because the specific prior art used as basis for the unpatentability determination have not been identified. "*

**THE TRUTH - THE SPECIFIC PRIOR ART HAS BEEN IDENTIFIED**

The Office is wrong for at least three reasons. First, Appellant respectfully disputes this because the specific prior art was identified in the Appeal Brief.

Second, in fact, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 72 through 100 in the Appeal Brief, and as cited in said Notice stated on page 4. The effort of the Appellant was ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on page 4 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement.

Third, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 4.

This is further proof that a portion of the Second Notice was improper and disingenuous and violated the Appellant's civil rights.

**The Office's Sixth False Statement (in the Second Disingenuous Notice of Non-compliance)**

**10. The Office's Communication inaccurately states,**

*"3. The Grouping of Claims states that claims do not stand or fall together."*

*" However, there is not discussion in the Arguments section of why EACH claim is considered separately patentable."*

**THE TRUTH - THERE IS NOT DISCUSSION IN THE ARGUMENTS SECTION OF WHY EACH CLAIM IS CONSIDERED SEPARATELY PATENTABLE**

The Office is wrong for at least seven reasons. First, Appellant respectfully disputes this because there is discussion in the Arguments section of why EACH claim is considered separately patentable.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on 5,

"The Office's notification states,

*"d. The statement on Grouping of Claims is improper because it includes arguments as to why certain claims do not stand or fall together. These arguments should be in the Argument section."*

**The Applicant has corrected this as requested."**

["Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5.

The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on page 5 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office to this matter. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5.



Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office.

This is further proof that a portion of the Second Notice was improper and disingenuous and violated the Appellant's civil rights.

**The Office's Seventh False Statement (in the Second Disingenuous Notice of Non-compliance)**

**11. The Office's Communication inaccurately states,**

*"4. The Arguments section is still incomplete and improper.*

**THE TRUTH - THE ARGUMENTS SECTION IS COMPLETE AND PROPER**

The Office is wrong for at least five reasons. First, Appellant respectfully disputes this because the Arguments section is complete and proper.

Second, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Third, Appellant respectfully disputes this because it was discussed on pages 11 through 61 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on pages 62 through 71 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on pages 72 through 89 of the Argument section for 35 U.S.C. 102, and then on pages 90 through 110 of the Argument section for 35 U.S.C. 103, and then on pages 111 through 119 of the Argument section for 35 U.S.C. 101.

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fifth, Appellant notes that said confabulation suggests obstruction of justice under color of law by the Office.

This is further proof that a portion of the Second Notice was false and improper and violated the Appellant's civil rights.

**The Office's Eighth False Statement (in the Second Disingenuous Notice of Non-compliance)**

**12. The Office's Communication inaccurately states,**

*"3. The Grouping of Claims states that claims do not stand or fall together."*

*" However, there is not discussion in the Arguments section of why EACH claim is considered separately patentable."*

**THE TRUTH - THERE IS DISCUSSION IN THE ARGUMENTS SECTION OF WHY EACH CLAIM IS CONSIDERED SEPARATELY PATENTABLE**

The Office is wrong for at least seven reasons. First, Appellant respectfully disputes this because there is discussion in the Arguments section of why EACH claim is considered separately patentable.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on 5,

"The Office's notification states,

*"d. The statement on Grouping of Claims is improper because it includes arguments as to why certain claims do not stand or fall together. These arguments should be in the Argument section."*

The Applicant has corrected this as requested."

["Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5.

The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on page 5 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5.

Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office.

This is further proof that a portion of the Second Notice was disingenuous and violated the Appellant's civil rights.

**The Office's Ninth False Statement (in the Second Disingenuous Notice of Non-compliance)**

**13. The Office's Communication inaccurately states,**

*"Not all grounds for rejection have been addressed, e.g., new matter rejection under section 9 of the Final Office Action. "*

**THE TRUTH - THE PURPORTED "NEW MATTER REJECTION" WAS IDENTIFIED AND DISCUSSED**

The Office is wrong for at least seven reasons. First, Appellant respectfully disputes this because the purported "new matter rejection" was identified and discussed on pages 3 and 4 in said Notice. Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on pages 3 and 4,

"The Office's notification states,

*"e. The discussion of applicant's contentions in the Argument section is improper. MPEP states, for example, that for each rejection under 35 U.S.C., first paragraph, the argument shall specify the errors in rejection and how said first paragraph is complied with, including as appropriate, how the specification and drawings, if any, a) describe the subject matter defined in each of the rejected claims; b) enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims; and c) set forth the best mode contemplated by the inventor of carrying out the invention. Applicant does not conform to this requirement of cited example of showing how his application complies with the first paragraph"*

Applicant has corrected this, as requested."

["Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief, as said Notice stated on pages 3 and 4. The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on pages 3 and 4 in said Notice of Sept. 17, 2003 and on pages 68 through 78 in the Appeal Brief. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Fifth, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4.

Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office.

This is further proof that a portion of the Second Notice was disingenuous and violated the Appellant's civil rights.

**The Office's Tenth False Statement (in the Second Disingenuous Notice of Non-compliance)**

**14. The Office's Communication inaccurately states,**

*"Since the above deficiencies have been listed in the 8/29/03 Office Action, Applicant's failure to correct them is no longer considered inadvertent."*

**THE TRUTH - THERE ARE NO "DEFICIENCIES"**

**THE TRUTH - APPLICANT DID NOT FAIL TO CORRECT THEM**

The Office is wrong for at least six reasons. First, Appellant respectfully disputes this because there are no "deficiencies". Second, Appellant respectfully disputes this because Applicant did NOT fail to correct them.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant respectfully disputes this because this was discussed on pages 2 though 5 of said Notice.

Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 2 though 5.

This is further proof that a portion of the Second Notice was improper and disingenuous and violated the Appellant's civil rights.

**The Office's Eleventh False Statement (in the Second Disingenuous Notice of Non-compliance)**

**15. The Office's Communication inaccurately states,**

*"In addition, it is noted that claim 14 is not included in Appendix A of the revised brief."*

**THE TRUTH - EXHIBITS WERE SUBMITTED AND IGNORED**

The Office is wrong for at least five reasons. First, Appellant respectfully disputes this because the Examiner asked him to correct this.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on 5,

"The Office's notification states,

*"f. Appendix A is incorrect because some claims are recited differently from those finally rejected, e.g., claims 1 and 10."*

The Applicant has put the correct claims in Appendix "A". Appellant attempted to call the Examiner who refused to address this matter to explain what he was speaking of. The Examiner was reminded that this was for the Board. He refused to discuss it.

The claims are those claims before Final. Attached is copies of the Post Cards stamped by the Office proving receipt [Exhibit "B", also Appendix "C"].

Applicant also presented amendments after Final to comply with the Examiner's suggestions/comments. Attached is the Post Card stamped by the Office showing receipt [Exhibit "B"]. This Exhibit proves Amendments were submitted after Final, and were timely received by the Office.

The claims before Final are in Appendix "A".

The amendments submitted after Final are in Appendix "B". "

**["Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5]**

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to Appendix A, as said Notice stated on page 5.

Third, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5.

Fourth, where is the Office's response to Exhibit "B" (previously presented to --and received by-- the Office; attached)?

Fifth, in the light of the above, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office.

This is further proof that a portion of the Second Notice was false and improper and violated the Appellant's civil rights.

**The Office's Twelfth False Statement And Most Chaotic Statement (in the Second Disingenuous Notice of Non-compliance)**

**16. The Office's Communication inaccurately states,**

*"Also, it is noted that Appendix B is mischaracterized as Amendments Entered After Final. "*

*"To avoid confusion with the claims under Appeal, Appendix B should be deleted."*

**THE TRUTH - THE OFFICE HAS MADE TWO OPPOSITE DICTATES OF APPENDIX B**

The Office is wrong for at least four reasons. First, the Office's behavior in this matter is chaotic. As one example, this demand in the Second Communication is opposite the Office's demand in the First Communication. Second, Appellant respectfully disputes this because Appellant already addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on 2, "The Office's notification states,

*"a. The statement of Status of Amendments is improper. Any arguments that the applicant may wish to make regarding these amendments should be discussed in Argument section rather than in this section. There is no Appendix B. contrary to the statement in this section."*

Appellant has corrected the statement of the Status of Amendments. Appendix B is corrected."

**["Notice of Compliance by Appellant", dated Sept. 17, 2003, page 2]**

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 3 in the Appeal Brief, as said Notice stated on page 2. The effort of the Appellant was ignored.

The Notice was ignored -- despite the fact that it was discussed with specificity on page 2 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03 chaotically and unfairly demands exactly the opposite of the first Office Communication.

Third, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Fourth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 2.

This is additional proof that yet another portion of the Second Notice was disingenuous and violated the Appellant's civil rights (consistent with Office policy that continues to THIS DAY).

10. In summary, there were more than a dozen errors and falsehoods in the disingenuous Second Notice of purported Non-compliance. It is apparent that the Second Notice was made so that the Appellant would have to repeat the Appeal Brief in triplicate so that further thousands of dollars would have to be spent in the Office's continuing war against the Appellant and American security.

11. The Decision states:

*"On November 26, 2003, applicant filed a petition regarding the propriety of the Notice of non- Compliant Appeal Brief. On December 2, 2003, applicant filed a third Appeal Brief."*

**THE TRUTH - The Facts demonstrate that the Appellant WAS Compliant**

The Facts demonstrate that the Appellant WAS Compliant. The facts demonstrate (*vide supra*) that there were more than a dozen errors and falsehoods in the disingenuous Second Notice. The facts demonstrate that the Appellant's response and Declarations were ignored.

12. The Decision states:

*"On January 22, 2004, a third Notice of Non-Compliant Appeal Brief was mailed to the applicant"*

**THE TRUTH - There was no lack of Compliance, only further disingenuous complaints and an ignoring by the Office of Appellants Declarations and Responses**

Attention of the Director and the federal court is directed to five (5) undisputed facts. First, the Third Notice of Non-Compliant Appeal Brief was also disingenuous, also contained several false statements, and was apparently made to systematically harass the Appellant and prevent his civil rights.

Second, the third notice had more than eight false statements. These are below discussed in considerable detail, were previously submitted to the Office but thoroughly ignored in the Decision.

Third, there was no lack of Compliance, only further disingenuous complaints and an ignoring by the Office of Appellant's Declarations and Responses. On January 28, 2004, the Appellant filed "Appellant's Notice To The Board Of False Statements In an Office Communication dated 1/22/04". In said document, filed with Declarations, the Appellant demonstrated in detail the falsehoods in the third Notice of Non-compliant Appeal Brief. The Appellant demonstrated that the Office made a series of errors. Again the Appellant and his submitted evidence and Declarations were ignored.

Fourth, NOTA BENE: The Court and Director should also note that egregiously, that office communication was odiously withheld, then mailed late to arrive on January 26, 2004 so that Appellant would have insufficient time to respond.

Fifth, the Third Notice was made so that the Appellant would have to repeat the Appeal Brief in triplicate so that additional thousands of dollars would have to be spent in the Office's war on the Appellant and American security.

The Office's First False Statement (in the Third Disingenuous Notice of Non-compliance mailed late so that Appellant would not have time to respond)

**5. The Office's Communication inaccurately states,**

*"4. Item 3 .... of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected."*

#### **THE TRUTH - THE APPELLANT RESPONDED**

The Examiner Has Been Unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

*"The Office's notification states, "d. The statement on Grouping of Claims is improper because it includes arguments as to why certain claims do not stand or fall together. These arguments should be in the Argument section."*

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5.

The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on page 5 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office to this matter. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5.

Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office."

**["Appellant's Notice to the Board", dated Nov, 18, 2003]**

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

" the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111."

This is proof that a portion of the Third Notice was false and improper and violated the Appellant's civil rights.

The Office's Second False Statement (in the Third Disingenuous Notice of Non-compliance mailed late so that Appellant would not have time to respond)

**6. The Office's Communication inaccurately states,**

*"4. Item 3 .. of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected."*

**THE TRUTH - THE APPELLANT RESPONDED**

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

**"12. The Office's Communication inaccurately states,**

*"3. The Grouping of Claims states that claims do not stand or fall together."*

*" However, there is not discussion in the Arguments section of why EACH claim is considered separately patentable."*

**THE TRUTH - THERE IS DISCUSSION IN THE ARGUMENTS SECTION OF WHY EACH CLAIM IS CONSIDERED SEPARATELY PATENTABLE**



The Office is wrong for at least seven reasons. First, Appellant respectfully disputes this because there is discussion in the Arguments section of why EACH claim is considered separately patentable.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on 5,

"The Office's notification states,

*"d. The statement on Grouping of Claims is improper because it includes arguments as to why certain claims do not stand or fall together. These arguments should be in the Argument section."*

The Applicant has corrected this as requested."

["Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5.

The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on page 5 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board. Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate. Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5. Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office."

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently

ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5."

This is further proof that a portion of the Third Notice was improper and disingenuous and violated the Appellant's civil rights .

The Office's Third False Statement (in the Third Disingenuous Notice of Non-compliance mailed late so that Appellant would not have time to respond)

**7. The Office's Communication inaccurately states,**

*"4. Item ... 4 of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected."*

#### **THE TRUTH - THE APPELLANT RESPONDED**

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

*"11. The Office's Communication inaccurately states, "4. The Arguments section is still incomplete and improper. "*

#### **THE TRUTH - THE ARGUMENTS SECTION IS COMPLETE AND PROPER**

The Office is wrong for at least five reasons. First, Appellant respectfully disputes this because the Arguments section is complete and proper.

Second, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Third, Appellant respectfully disputes this because it was discussed on pages 11 through 61 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on pages 62 through 71 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on pages 72 through 89 of the Argument section for 35 U.S.C. 102, and then on pages 90 through 110 of the Argument section for 35 U.S.C. 103, and then on pages 111 through 119 of the Argument section for 35 U.S.C. 101.

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fifth, Appellant notes that said confabulation suggests obstruction of justice under color of law by the Office."

**["Appellant's Notice to the Board", dated Nov, 18, 2003]**

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Third, Appellant respectfully disputes this because it was discussed on pages 11 through 61 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on pages 62 through 71 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on pages 72 through 89 of the Argument section for 35 U.S.C. 102, and then on pages 90 through 110 of the Argument section for 35 U.S.C. 103, and then on pages 111 through 119 of the Argument section for 35 U.S.C. 101."

This is further proof that a portion of the Third Notice was improper and disingenuous and violated the Appellant's civil rights.

The Office's Fourth False Statement (in the Third Disingenuous Notice of Non-compliance mailed late so that Appellant would not have time to respond)

**8. The Office's Communication inaccurately states,**

*"4. Item ... 4 of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected."*

**THE TRUTH - THE PURPORTED "NEW MATTER REJECTION" WAS IDENTIFIED AND DISCUSSED**

The Office's Communication stated, *"Not all grounds for rejection have been addressed, e.g., new matter rejection under section 9 of the Final Office Action."*

However, the Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong for at least seven reasons. First, Appellant respectfully disputes this because the purported "new matter rejection" was identified and discussed on pages 3 and 4 in said Notice. Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on pages 3 and 4,

"The Office's notification states,

*"e. The discussion of applicant's contentions in the Argument section is improper. MPEP states, for example, that for each rejection under 35 U.S.C., first paragraph, the argument shall specify the errors in rejection and how said first paragraph is complied with, including as appropriate, how the specification and drawings, if any,*

*a) describe the subject matter defined in each of the rejected claims; b) enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims; and c) set forth the best mode contemplated by the inventor of carrying out the invention. Applicant does not conform to this requirement of cited example of showing how his application complies with the first paragraph"*

**Applicant has corrected this, as requested."**

**["Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4]**

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief, as said Notice stated on pages 3 and 4. The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on pages 3 and 4 in said Notice of Sept. 17, 2003 and on pages 68 through 78 in the Appeal Brief. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief. Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra). Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate. Fifth, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra). Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4. Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office."

**["Appellant's Notice to the Board", dated Nov, 18, 2003]**

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief, as said Notice stated on pages 3 and 4. The meticulous effort of the Appellant was again ignored."

This is further proof that yet another portion of the Third Notice was improper and disingenuous and violated the Appellant's civil rights.

The Office's Fifth False Statement (in the Third Disingenuous Notice of Non-compliance mailed late so that Appellant would not have time to respond)

9. The Office's Communication inaccurately states,

*"3. As to "operability" being a 35 U.S.C. 101 rather than a 35 U.S.C. 112, first and second paragraph issue, there has not been any change on the Office interpretation of this matter, contrary to the allegation of the Applicant."*

#### **THE TRUTH - THE APPELLANT RESPONDED**

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

" 8. The Office's Communication inaccurately states,

*" The claimed "operability" of the invention is not a 35 U.S.C. 112, first and second paragraph issues, but a 35 U.S.C. 101 issue. "*

The Office is wrong for at least four reasons. First, Appellant respectfully disputes this because this is nonsense. For ten years the Office has cited "operability" pursuant to 35 U.S.C. 112, first paragraph issues. All of a sudden, Mr. Carone changes the Office's previous arguments that were reasonably consistent over more than a decade in this matter. This is egregious without a clear substantive basis for the paroxysmal change.

Second, Appellant respectfully disputes this because a 35 U.S.C. 101 issue involves utility and not "operability". Appellant discussed this in detail. Attention of the Court, Board, and Commissioner is now directed to where it was discussed in detail on pages 111 through 119 in the Appeal Brief. The effort of the Appellant was ignored. Where is the Office's response? Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement. Third, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board. Fourth, Appellant respectfully disputes this purported change by the Office because this is a new argument of the Office, and should be in the Argument section of the Office's response.

**['Appellant's Notice to the Board', dated Nov, 18, 2003]**

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response.

This is further proof that a portion of the Third Notice was false and improper and violated the Appellant's civil rights.

The Office's Sixth False Statement (in the Third Disingenuous Notice of Non-compliance mailed late so that Appellant would not have time to respond)

**10. The Office's Communication inaccurately states,**

*"2. As to recitation of issues still improper, see for example the last paragraph on page 9 of the Amended Appeal Brief."*

**THE TRUTH - THE APPELLANT RESPONDED**

The Examiner Has Been Unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

**"6. The Office's Communication inaccurately states,**

*"2. The recitation of Issues is still improper (see item c of the previous OA)."*

**THE TRUTH - THE RECITATION OF ISSUES IS PROPER**

The Office is wrong for at least six reasons. First, Appellant respectfully disputes this because the recitation of Issues is indeed proper.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on pages 3 and 4,

"The Office's notification states,

*"c. The recitation and scope of Issues is improper. MPEP 1206 states that each stated issue should correspond to a separate ground of rejection which the appellant washes the Board to review. The statement of issues should not include any argument concerning the merit of the issues. For example, a proper way of phrasing an issue is as follows: 'Whether claims 1, 5 8, 10 14 and 21 30 are unpatentable under U.S.C. 101 because the claimed invention is inoperative and therefore lacks unity.' Applicant improperly includes other issues not relevant to the grounds of rejection used by the examiner, e.g., U.S. Constitution."*

"The Applicant has corrected this as requested. The Applicant has removed the offending references to the " U.S. Constitution." and reserves his rights to take the Constitutional issues to the Federal Court, First Circuit by this unconstitutional action of the Office and/or Board censoring the very document which enables the Office."

The Applicant has corrected this, and removed the citation from this section."

[*"Notice of Compliance by Appellant"*, dated Sept. 17, 2003, pages 3 and 4]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on pages 8 through 9 in the Appeal Brief, as said Notice stated on pages 3 and 4. The effort of the Appellant was ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on pages 3 and 4 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement.

Third, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Fifth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4.

Sixth, in the legal system, it is Appellant who makes notice of the Appeal - and not the Office. The Office is demanding that IT fashion the Appellant's issues. For some unknown reason, the Office now demands to control the thought, the Appeal, the issues, and the Arguments as of this date. That is unlawful and consistent with harassment, and has much more than an appearance of impropriety."

**["Appellant's Notice to the Board", dated Nov, 18, 2003]**

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

**"The Applicant has corrected this as requested. The Applicant has removed the offending references to the "U.S. Constitution."**

This is further proof that a portion of the Third Notice was improper and disingenuous and violated the Appellant's civil rights (consistent with Office policy that continues to THIS DAY).

NOTA BENE: Attention is directed to the fact that the Office found a problem with the Appellant mentioning the US Constitution.

The Office's Seventh False Statement (in the Third Disingenuous Notice of Non-compliance mailed late so that Appellant would not have time to respond)

**11. The Office's Communication inaccurately states,**

*"1. As to the summary still containing subject matter not found in the specification, see for example, page 4, 2nd paragraph and page 7, last three paragraphs of the 9/23/03 Amendment of the Appeal Brief (An-ended Appeal Brief)."*

This is new material and was not specified in the previous notice. Furthermore, the Examiner Has Been Unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

*"1. The Summary still includes subject matter not found in the specification (see item b of previous Office Action)."*

The Office is wrong for at least five reasons. First, Appellant respectfully disputes this because the subject matter was discussed in the specification.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. For example, in said Notice, the Appellant said on page 2,

"The Office's notification (of 8/28/03) states,

*"The Summary includes subject matter not found in the specification (see page 7, last three paragraphs)."*

The Applicant has corrected this, and removed the citation from this section."

["Notice of Compliance by Appellant", dated Sept. 17, 2003, page 2]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on pages 4 through 7 in the Appeal Brief, as said Notice stated on page 2. Not only was the effort of the Appellant ignored, but the Notice itself was ignored -- despite the fact that it was discussed with specificity on page 2 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication, once again has a false statement.

Third, Appellant respectfully disputes this because each and every matter of the invention was already before the Board. The Appellant has a right to present his case and for it to be concise, clear and accurate before the Board.

Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate. Fifth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 2.

["Appellant's Notice to the Board", dated Nov, 18, 2003]

This is further proof that yet another portion of the Third Notice was improper and disingenuous and violated the Appellant's civil rights.

The Office's Eighth False Statement (in the Third Disingenuous Notice of Non-compliance mailed late so that Appellant would not have time to respond)

**12. The Office's Communication inaccurately states,**

*"Since the above deficiencies have been listed in the 8/29/03 Office Action and in the 11/18/03 Notice of Non-Responsive Amendment, Applicant's failure to correct them is not considered inadvertent."*

#### **THE TRUTH - THE APPELLANT RESPONDED**

The Examiner Has Been Unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

**"14. The Office's Communication inaccurately states,**

*"Since the above deficiencies have been listed in the 8/29/03 Office Action, Applicant's failure to correct them is no longer considered inadvertent."*

The Office is wrong for at least six reasons. First, Appellant respectfully disputes this because there are no "deficiencies". Second, Appellant respectfully disputes this because Applicant did



NOT fail to correct them. Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra). Fourth, Appellant respectfully disputes this because this was discussed on pages 2 through 5 of said Notice. Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate. Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 2 through 5.

**['Appellant's Notice to the Board', dated Nov, 18, 2003]**

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments.

Furthermore, attention is directed to the fact that despite the Office's allegation, the Appellant made many many changes including entering claim 14 in Appendix A of the revised brief as requested, including responding to the Examiner (incorrect) demand that Appendix B should be deleted, and including responding to the Examiner (incorrect) demand that not all grounds for rejection of claims are addressed regarding new claims 24, 26 and 28. These and other demands by the Examiner (made to unconstitutionally prevent an Appeal) were satisfied. Instead, of abiding by the law, there are at least a dozen errors in the Communication of 11/18/03 by Mr. Carone.

This is unfair. This is unreasonable. This has been a pattern. Since receipt of the Remand from the Board, the Examiner and/or Mr. Carone has made false statement after false statement. If there was a fifty percent likelihood of each error (that is, if it were made innocently), then the scores of errors since then reveal that there is only a one in a trillion likelihood that Mr. Carone and/or the Examiner are innocent.

Applicant respectfully notes that the U.S. Supreme Court has ruled that any pro se litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

This is further proof that a portion of the Third Notice was false and improper and violated the Appellant's civil rights (consistent with Office policy that continues to THIS DAY).

13. In summary, there were more than eight errors and falsehoods in the Third Notice. It is apparent that the Third Notice was made so that the Appellant would have to repeat the Appeal Brief in triplicate so that further thousands of dollars would have to be spent in the Office's continuing war against the Appellant and American security.

14. The Decision states:

*On February 3, 2004, applicant filed a second petition regarding the propriety of the Notice of non-Compliant Appeal Brief. On May 5, 2005, the office DENIED applicant's petitions. The petition decision determined that applicant's Appeal Brief did not comply with item (8) of 37 CFR 1.192(c)."*

**THE TRUTH - THE APPELLANT'S ARGUMENTS AND DECLARATIONS WERE IGNORED**

The Appellant's arguments and Declarations have been ignored, which is inconsistent with the truth required in federal documents and inconsistent with Office rules.

The Appellant's Appeal Brief has been ignored, which is inconsistent with the truth required in federal documents and inconsistent with Office rules.

15. The Decision states:

*"On August 11 , 2005, the application was abandoned due to applicant's failure to file a proper Appeal Brief "*

**THE TRUTH - GIVEN THE FALSE STATEMENTS IN THE NOTICES OF NON-COMPLIANCE THOSE INDIVIDUALS IN THE OFFICE WHO WERE DISINGENOUS SHOULD BE FIRED AND FINED**

This is unfair because it has been shown that the complaints were errors by the Office. It is apparent the first Notice of Non-Compliance had falsehoods and disingenuous statements. It is apparent the second Notice of Non-Compliance had falsehoods and more than twelve (12) disingenuous statements. It is apparent the third Notice of Non-Compliance had falsehoods and more than eight (8) disingenuous statements. It is apparent that the Appellant did respond, and at great cost filed nine (9) Appeal Briefs even though they were not all necessary. The Appeal Briefs were compliant and were on time.

16. The abandonment and Decision are egregious. The Appeal Briefs were compliant and were on time. The Appellant satisfied all the problems and demonstrated that the "problems" purported by the Office were nonexistent, trivial, and made only to harass the Appellant and obstruct justice (to prevent the Appeal Board from every hearing from a litigant that already paid the fee). The Office's complaints were ALL addressed.

17. As demonstrated above, and previously (including in the un rebutted Declarations) the first Notice of Non-Compliance had false statements. The second Notice of Non-Compliance had more than twelve (12) false statements. The third Notice of Non-Compliance had more than eight (8) false statements.

18. Applicant's Appeal Briefs have simply been ignored by the Examiner and Office. Pursuant to In re Oetiker, Applicant did respond in full to each of the Examiner's points, in considerable detail. The meticulous effort of the Appellant has again been ignored. The Applicant's points were persuasively argued, proven by the record, and based upon a firm foundation and support of evidence. The Office has failed to cite Applicant's arguments, has failed to discuss Applicant's arguments, and have failed to read and address Applicant's arguments precisely. It is the OFFICE which has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communications from the Applicant to the Examiner.

19. For the above reasons, documented by the record, said Decision ignores the normal uniform standard of review. For the above reasons, documented by the record, said Decision is not supported by the Law or the record, and therefore, the Decision is wrong, and it is therefore reasonably and respectfully requested that it should be reconsidered and changed to allow said Petitions. The Director should act and correct this egregious Decision because The US Patent

Office has been shown to be disingenuous over and over (vide supra) in the disingenuous Notices of (purported) Non-compliance.

20. Given the false statements in the Notices of Non-Compliance, and this coverup, those individuals in the Office who were disingenuous should be reported to the proper authorities including Congress, Homeland Security and the Department of Defense. Sanctions are in order. As the most recent salient proof:

"Still, I was struck by the discomfort of Mr. Godici as he struggled to explain why the blanket exclusion of cold fusion remains in effect when during the intervening 16 years since its adoption, certainly some better understandings and approaches to cold fusion and its related technologies must have occurred which, ordinarily and but for the ban, would meet the new and useful criteria for a patent, or constitute what I'll call, a "non-obvious improvement of existing technology." Of course, this was not the exact question put to him, but it was the sum and substance of the "conversation" (more formally known as testimony) had about Mr. Behrend's role and his automatic REJECTED stamp. None of Mr. Godici's answers was totally satisfactory, and the urge, not well restrained, to say, if not scream: "Hold it a minute! Isn't time to go back to the earlier days of the PTO when inventors had to produce working models of their devices? It can't it be an applicant's option, and while the days of obvious and easily visible confirmation of claim's have come and gone, the PTO has the National Institute of Standards and Technology to test and verify or reject claims of subtle, hard to grasp accomplishments. And, if the NIST lacks that capability, there are DoE and scores of DoD labs that in collaboration with the PTO could undertake the task."

[IN THE MATTER OF ARBITRATION Between Patent Office Professional Association  
and US Department of Commerce, Patent and Trademark Office,  
DECISION AND AWARD ON THE MERITS, 30th day of July, 2005, Robert T. Moore,  
Arbitrator]

21. Attention of the Director, the Board and the Court is directed to the fact that the Office has again shown to have been deceptive and disingenuous. BOTH accuracy and details have been lost in the Office's arguments of the Decision.

Attention of the Director, the Board and the Court is directed to the fact that the Office has ignored the Appeal Briefs, the Appellant's arguments, and has taken sentences from Appplicant's response out of context (bold and underlined for emphasis) and in a way other than used by the Applicant.

Attention of the Director, the Board and the Court is directed to the fact that systematically ignoring this patent application is of benefit to foreign governments. This is an apparent violation of Title 18 U.S.C., Section 1831.

Attention of the Director, the Board and the Court is directed to the fact that systematically ignoring this patent application is tantamount to knowingly performs targeting trade secrets to benefit someone other than the owner. This is an apparent violation of Title 18 U.S.C., SECTION 1832.

22. The Commissioner should act on this Petition because of its strength, because of the need for justice and because the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

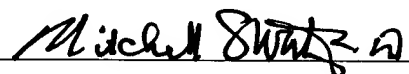
WHEREFORE, since applicant did properly respond to each Notice of Non-Compliance, and did submit compliant Appeal Briefs, the Commissioner should act on this Petition and use supervisory authority to immediately reinstate the above-entitled application and forward the Appeal Briefs received January 28, 2004 to the Board, consistent with justice and the US Constitution to which the Director has taken an Oath.

The Commissioner should use supervisory authority to recuse all involved in the systematic disingenuous statements cited above, and the subsequent attempted coverup, so as to remove the appearance of impropriety due to what appears to be systematic obstruction of justice, and a systematic attack on Appellant's civil rights.

The Applicant respectfully requests Sanctions against Examiner and his Supervisor in the amount of \$100,000.000 for their bias and pattern of conduct.

The Applicant respectfully requests an internal investigation of the Examiner and his Supervisors because their pattern of conduct demonstrates violations of the Office's rules, the US Consitution, and are apparent violations of Intellectual Property Rights, Title18 U.S.C., Section 1831, Title 18 U.S.C., SECTION 1832, and possibly the Economic Espionage Act (EEA) of 1996.

Respectfully submitted,



Mitchell Swartz, Appellant  
Post Office Box 81135  
Wellesley Hills, Mass. 02481

**Certificate Of Mailing [37 CFR 1.8(a)]**

April 15, 2006

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

The Commissioner for Patents  
Alexandria, VA 22313-14501  
on the date below.

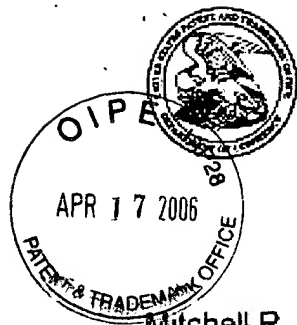
Thank you.

Sincerely,

April 15, 2006



M.R. Swartz



UNITED STATES PATENT AND TRADEMARK OFFICE

**MAILED  
FROM DIRECTORS OFFICE**

**MAR 24 2006**  
Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
**TECHNOLOGY CENTER 3600** [www.uspto.gov](http://www.uspto.gov)

Mitchell R. Swartz ScD, MD, EE  
16 Pembroke Road  
Weston, MA 02493

In re Application of  
Mitchell R. Swartz  
Application No. 09/748,691  
Filed: December 26, 2000  
For: METHOD TO CONTROL REACTIONS  
INVOLVING ISOTOPIC FUEL WITHIN A  
MATERIAL USING ORTHOGONAL  
ELECTRIC-FIELDS

DECISION ON THE PETITION  
UNDER 37 CFR 1.181

**EXHIBIT "A"**

This is a decision on applicant's petition on the propriety of the Abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on October 17, 2005.

The petition is **DENIED**.

#### RELEVANT HISTORY

On **April 30, 2003** and **May 5, 2003**, applicant filed a Notice of Appeal appealing the final rejection made on February 3, 2003.

On **July 3, 2003**, applicant filed an Appeal Brief.

On **August 29, 2003**, a Notice of Non-Compliant Appeal Brief was mailed to the applicant.

On **September 23, 2003**, applicant filed a second Appeal Brief.

On **November 18, 2003**, a second Notice of Non-Compliant Appeal Brief was mailed to the applicant with the indication that applicant's response/attempt to correct the noted deficiencies was no longer considered to be inadvertent and the period for reply continued to run from the August 29, 2003 Notice of non-Compliance. Thus, applicant's statutory time period for adequately responding to the Notice of non-Compliance would expire on March 1, 2004.

On **November 26, 2003**, applicant filed a petition regarding the propriety of the Notice of non-Compliant Appeal Brief.

On **December 2, 2003**, applicant filed a third Appeal Brief. No extension of time period fees were paid by applicant.

On **January 22, 2004**, a third Notice of Non-Compliant Appeal Brief was mailed to the applicant with the indication that applicant's response/attempt to correct the noted deficiencies



**RESPONSE UNDER 37 CFR 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 3641**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

For: METHOD TO CONTROL REACTIONS  
INVOLVING ISOTOPIC FUEL  
WITHIN A MATERIAL USING  
ORTHOGONAL ELECTRIC-FIELDS

Serial no. 09/ 748,691

Filed: 12/26/2000

This is a division of Serial no. 07/ 760,970

Filed: 09/17/1991

Group Art Unit: 3641  
Examiner: Palabrica, R.J.

April 15, 2006

The Commissioner for Patents  
Alexandria, VA 22313-14501

**DECLARATION OF DR. MITCHELL SWARTZ  
SUPPORTING PETITION TO THE COMMISSIONER**

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. I have a background in electrical engineering, material science, electrochemistry, and medicine, and have worked in this field for more than sixteen years, and have worked on experimental projects at the Massachusetts Institute of Technology, Massachusetts General Hospital and elsewhere since the '60s.

2. I have received an unfair and wrongful Decision [Exhibit "A", attached, hereinaftercission"] dated March 24, 2006.

3. The Decision is wrong and should be immediately reconsidered and changed to correspond to the docket, to the already submitted compliant Briefs.

4. Ignored in the Decision is the fact that the first "Notice of Non-Compliant Appeal Brief" had at least two false statements.

5. The Second Notice of Non-Compliant Appeal Brief was also disingenuous, with more than twelve false statements. These were discussed and proven in considerable detail - and ignored in the Decision.

6. For example, it ignored pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

As another example, said Notice ignored page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101. The submitted Appeal Brief WAS Compliant. The facts demonstrate (*vide supra*) that there were more than a dozen errors and falsehoods in the disingenuous Second Notice. The facts demonstrate that the Appellant's response and Declarations were ignored.

7. The third notice had more than eight false statements. There was no lack of Compliance, only further disingenuous complaints and an ignoring by the Office of my Declarations, responses, and submitted Brief. As one example, specifically ignored was my request to know the basis which allows the Examiner to dismiss the Argument that, "Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5."

As another example, also ignored was my request to know the basis which allows the Examiner to dismiss the Argument that, "Third, Appellant respectfully disputes this because it was discussed on pages 11 through 61 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on pages 62 through 71 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on pages 72 through 89 of the Argument section for 35 U.S.C. 102, and then on pages 90 through 110 of the Argument section for 35 U.S.C. 103, and then on pages 111 through 119 of the Argument section for 35 U.S.C. 101."

8. My Appeal Briefs have simply been ignored by the Examiner and Office. Pursuant to In re Oetiker, I did respond in full to each of the Examiner's points, in considerable detail. My meticulous effort has again been ignored even though my arguments were persuasively made, proven by the record, and based upon a firm foundation and support of evidence.

9. The Office has failed to cite my arguments, and has failed to read and address my arguments precisely. It is the OFFICE which has been unresponsive to my arguments even though they were fully discussed in significant detail in the previous Communications to the Examiner.


Respectfully,

A handwritten signature in black ink, appearing to read "Mitchell Swartz", followed by a small flourish. The signature is written over a horizontal line.

Mitchell Swartz, ScD, MD, EE  
Post Office Box 81135  
Wellesley Hills, Mass. 02481

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:  
April 15, 2006

A handwritten signature in black ink, appearing to read "M Swartz", followed by a small flourish. The signature is written over a horizontal line.

Mitchell R. Swartz, ScD, MD, EE  
Post Office Box 81135  
Wellesley Hills, Mass. 02481